APPENDIX A

IN THE CIRCUIT COURT OF THE CITY OF ST. LOUIS
STATE OF MISSOURI

Cause No. 962-07038

Division No. 1

JOHN E. HARPER,
Plaintiff,

vs.

MISSOURI PACIFIC RAILROAD COMPANY
and UNION PACIFIC RAILROAD COMPANY,
Defendants.

PLAINTIFF'S MOTION FOR PROTECTIVE ORDER AND FOR SANCTIONS

COMES NOW Plaintiff, John E. Harper, by and through his attorneys, and for his Motion for Protective Order and for Sanctions, states as follows:

1. Plaintiff respectfully asks this Court for an Order protecting him and prohibiting the Defendants from sending Plaintiff to a medical exam, a physical capacity evaluation or requiring him to provide medical documentation after rejecting a document from his treating physician advising him to stay off work and prohibiting Defendants from conducting an investigation and/or assessing discipline against Plaintiff for not attending such examinations or providing such documentation.

2. In support thereof, Plaintiff states that on April 17, 1996, he sustained injury as a result of having to remove a windshield from a locomotive engine without being afforded proper procedures, equipment or tools. After the accident, Plaintiff advised the Defendants of his injury and kept the Defendants fully apprised of his medical care as well as medications and addi-

tional restrictions imposed on him, by his treating physicians. (See Exhibit A [omitted from Resp. App.]) Plaintiff has had previous back injuries suffered through the course of his employment with the Defendants, and has been put on permanent restrictions by his physician as well as by his employer. Despite these restrictions, he has been called on to perform work which is beyond the scope of the restrictions imposed by his treating physicians in the course of his employment for the Defendants. Within one month of his injury, Plaintiff returned to seek the advice of the same treating physician who tendered medical care for his condition for a number of years; that physician recommended he remain off work for an undetermined amount of time. (See Exhibit B [omitted from Resp. App.]) The plaintiff presented Andrew Ribbing, a representative of his employer with this notice on May 14, 1996. Mr. Ribbing advised the plaintiff, in the presence of his union representative, that the note from his physician was insufficient; Mr. Ribbing then handed the Plaintiff a blank, undated form letter which requested specific information as to his medical care and condition. (see Exhibit C [omitted from Resp. App.]) Plaintiff advised Mr. Ribbing that he was scheduled for additional diagnostic testing on May 20, 1996, however did not yet have a specific date to return to the physician, pending the results of the tests. Mr. Ribbing indicated there was no particular hurry in providing the information requested. (See Plaintiff's affidavit [omitted from Resp. App.])

3. On June 1, 1996, the Plaintiff received a notice concerning an investigation which was scheduled for June 4, 1996 for his failure to comply with the instructions issued by Mr. Ribbing. (See Exhibit D [omitted from Resp. App.]) It is believed that the purpose of this investigation is to harass the plaintiff; the investigation invades the attorney-client privilege and such an investigation is used to conduct informal discovery which is beyond the scope of discovery permitted by the Missouri Rules of Civil Procedure.

4. After an extensive hearing, this Honorable Court considered similar factual issues in a number of similar Railroad cases which were filed in this Circuit with the intent of giving a precedent-setting Order in such cases. This Court, after careful consideration of evidence submitted by both sides, has ruled that such conduct by the Railroad is prohibited and shall be stayed until the end of the case. (See Exhibits E-1, E-2 and E-3 [omitted from Resp. App.])

That Plaintiff attaches hereto and incorporates herein, the documents and pleadings filed concerning these issues in *Duren v. Missouri Pacific Railroad, et al.,* Cause No.942-01584.

WHEREFORE, for the above reasons as well as the reasons stated in the filing of *Duren v. Missouri Pacific, et al.,* Plaintiff prays that the Court enter its Protective order Prohibiting Defendants from instructing Plaintiff to attend functional capacity tests, physical examinations or other similar tests and requiring him to provide medical documentation, and to further prohibit Defendants from disciplining Plaintiff for failing to attend such tests and examinations and for failure to provide medical documentation, or for insubordination for failing to comply with instructions and for other Sanctions as this Court deems appropriate.

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